

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2013-001180-001 DT

04/20/2015

COMMISSIONER PHEMONIA L. MILLER

CLERK OF THE COURT

Y. King

Deputy

STATE OF ARIZONA

RICHARD E SERDEN

v.

RANDY SLEEM (001)

RANDY SLEEM
2705 E VERBENA DR
PHOENIX AZ 85048
DWANE M CATES

UNDER ADVISEMENT RULING

Following a Restitution Hearing on February 18, 2015, the Court took the Victims' Request for Restitution under advisement. The Court has considered the testimony and exhibits introduced at the Restitution Hearing, and the arguments of counsel. The Court has observed the demeanor of the witnesses while testifying and the following findings are based on the evidence as well as the Court's assessment of credibility:

Brief background is instructive.

On February 19, 2014, Defendant was convicted of Aggravated Assault, A Class 3 Felony and was placed on probation for a period of three years. The plea agreement stated that Defendant would pay restitution to the victim (Michael Fredo) in an amount not to exceed \$1,000,000.00. The Court retained jurisdiction over restitution, at the time of sentencing.

At the Restitution Hearing, the victim testified that he received a \$50,000.00 settlement from the Defendant's insurance company, for full and final payment of the injuries sustained in the accident. The victim indicated that the \$50,000.00 settlement was distributed as follows:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2013-001180-001 DT

04/20/2015

1. Cigna for medical claims-\$33,000.00
2. Attorney's fees- 33.33 % of the \$50,000.00
3. Victim received approximately \$3100.00

In addition to the \$50,000 settlement, the victim is requesting \$12,947.16 in restitution: (1) \$4200.00 lost wages (2) \$378.74 Court appearances (lost wages) and (3) \$8368.42 medical and dental services.

LEGAL ANALYSIS AND CONCLUSION

In Arizona, restitution is mandatory, and its purpose is to make the victim whole. Ariz. Const, art. 2, § 2.1(A)(8); *State v. Zaputil*, 220 Ariz. 425, 428, ¶¶ 10–11, 207 P.3d 678, 681 (App. 2008). “If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime ... in the full amount of the economic loss as determined by the court...” A.R.S. § 13–603(C) ‘Economic loss’ means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses that would not have been incurred but for the offense.” A.R.S. § 13–105(16) “Economic loss does not include ... consequential damages.” *Id.*

This Court must determine the amount of restitution, if any, that is appropriate when the victim has already received some compensation. Additionally, restitution and civil damages are independent under Arizona law, and the state's power to order restitution does not bar a victim from seeking damages in a civil action. A.R.S. § 13–807; *State v. Pearce*, 156 Ariz. 287 at 289, 751 P.2d at 605....Because restitution also promotes the rehabilitative purpose of the criminal law, and because civil damage payments may not be fully compensatory, the court is not automatically foreclosed from ordering some restitution simply because the victim has received some compensation as a result of a civil action. *See Shenah v. Henderson*, 106 Ariz. 399, 476 P.2d 854 (1970) (under prior law restitution was ordered to be paid in addition to insurance payment, apparently by defendant's automobile liability insurer). *Accord People v. Clifton*, 172 Cal.App.3d 1165, 219 Cal.Rptr. 904 (1985). Moreover, the distinction between civil damages and restitution means that the victim's release of *civil* liability does not prevent the state from ordering the *criminal* law remedy of restitution. *State v. Iniquez*, 169 Ariz. 533, 821 P.2d 194 (1991). The victim's release of his or her claims does not encompass restitution: restitution is not a claim which belongs to the victim, but a remedial measure that the court is statutorily obligated to employ. *Id.*

With respect to the victim's dental claim,

The law is clear that an appropriate restitution award consists of monies for economic losses *that flow directly from or are the direct result of the crime committed*. *State v. Morris*,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2013-001180-001 DT

04/20/2015

173 Ariz. 14, 17, 839 P.2d 434, 437 (App. 1992). In this case, based upon the evidence presented, this Court cannot find that the victim's dental bills are economic losses that flowed directly from the crime or are the direct result of the crime committed by the Defendant. Therefore,

IT IS ORDERED denying victim's claim for payment of dental bills.

With respect to the victim's outstanding medical bills,

Victim is claiming \$8368.42 in unpaid medical and dental bills. This amount is not supported by the evidence. Copies of victim's medical and dental bills were admitted into evidence. (See Exhibit 1 and Exhibit 2). Unpaid dental bills totaled \$1709.60. Unpaid medical bills totaled \$2330.44. The victim submitted duplicate bills and is not entitled to payment for duplicate bills. (See Exhibit 2) The victim's testimony was inconsistent with Exhibits 1 and 2 and lacked credibility. The victim received some money from the settlement but could not articulate the specific amount that was for lost wages, medical bills, pain and suffering, etc. Victim testified that he received approximately \$3100.00 from the settlement. *If this is true*, the \$2330.44 will be offset by the \$3100.00 the victim received from the settlement.

With respect to lost wages,

This court cannot determine from the evidence whether victim incurred any lost wages that were not covered by his employer. However, it is reasonable to assume, based on the victim's injuries, that he incurred lost wages if he was employed at the time of the incident. Therefore, if the victim would like the court to consider awarding lost wages for the first 30 days he was unable to work, the victim shall provide a statement from his employer indicating his hourly rate from May 26, 2012 through June 26, 2012 and that he was not compensated by his employer. The victim will have until **May 22, 2015** to submit the documentation to the court. The defendant will have until **June 5, 2015** to file his response.

IT IS ORDERED signing this minute entry as a formal written order of the Court.

/s/ JUDGE PRO TEM PHEMONIA L. MILLER

JUDICIAL OFFICER OF THE SUPERIOR COURT